

**STATE OF INDIANA
DEPARTMENT OF STATE REVENUE**

IN REGARDS TO THE MATTER OF:

**CARNINE LITTLE LEAGUE, INC.
DOCKET NO. 29-2002-0133**

PROPOSED DEPARTMENTAL ORDER

Being duly advised and having considered the entire record, the Administrative Law Judge makes the following Proposed Departmental Order.

Petitioner was the subject of an investigation conducted on December 22, 2003 by the Criminal Investigation Division of the Indiana Department of Revenue. The Department issued a letter dated February 28, 2002, in which Petitioner's bingo license was the subject of an emergency revocation. Petitioner's Indiana charity gaming license was suspended for five (5) years, and it was assessed civil penalties in the amount of eight thousand five hundred dollars (\$8,500). The Petitioner protested in a timely manner.

FINDINGS OF FACTS

- 1) Petitioner protested the Department's proposed actions on March 1, 2002.
- 2) The Department acknowledged the Petitioner's appeal in a letter dated March 4, 2002.
- 3) The Department in a letter dated March 11, 2002 set an administrative hearing for Tuesday, May 14, 2002.
- 4) On Wednesday, May 8, 2002 the Indiana Department of Revenue by counsel requested an indefinite extension of time.
- 5) The extension was granted on May 8, 2002. At that time the Department's attorney was directed to file a status report in this matter every two weeks until a hearing date and time is requested.
- 6) Pursuant to IC 4-21.5-3-1 notice was given to the Petitioner on March 15, 2004 regarding a possible dismissal of its appeal.
- 7) Petitioner has failed to respond to the Department's correspondence.

STATEMENT OF LAW

- 1) IC 4-21.5-3-24 states, "(a) At any stage of a proceeding, if a party fails to:
 - (1) file a responsive pleading required by statute or rule;
 - (2) attend or participate in a prehearing conference, hearing, or other stage of the proceeding; or
 - (3) take action on a matter for a period of sixty (60) days, if the party is responsible for taking the action;the administrative law judge may serve upon all parties written notice of a proposed default or dismissal order, including a statement of the grounds.

(b) Within seven (7) days after service of a proposed default or dismissal order, the party against whom it was issued may file a written motion requesting that the proposed default order not be imposed and stating the grounds relied upon. During the time within which a party may file a written motion under this subsection, the administrative law judge may adjourn the proceedings or conduct them without the participation of the party against whom a proposed default order was issued, having due regard for the interest of justice and the orderly and prompt conduct of the proceedings.

(c) If the party has failed to file a written motion under subsection (b), the administrative law judge shall issue the default or dismissal order. If the party has filed a written motion under subsection (b), the administrative law judge may either enter the order or refuse to enter the order.

(d) After issuing a default order, the administrative law judge shall conduct any further proceedings necessary to complete the proceeding without the participation of the party in default and shall determine all issues in the adjudication, including those affecting the defaulting party. The administrative law judge may conduct proceedings in accordance with section 23 of this chapter to resolve any issue of fact.

CONCLUSIONS OF LAW

- 1) IC 4-21.5-3-24 states, “(a) At any stage of a proceeding, if a party fails to: (1) file a responsive pleading required by statute or rule; (2) attend or participate in a prehearing conference, hearing, or other stage of the proceeding; or (3) take action on a matter for a period of sixty (60) days, if the party is responsible for taking the action; the administrative law judge may serve upon all parties written notice of a proposed default or dismissal order, including a statement of the grounds.
- 2) The Petitioner’s failure to respond to the Department’s letters is grounds for a proposed dismissal order pursuant to IC 4-21.5-3-24.

PROPOSED DEPARTMENTAL ORDER

Following due consideration of the entire record, the Administrative Law Judge orders the following:

The Petitioner’s appeal is dismissed.

- 1) Administrative review of this proposed decision may be obtained by filing, with the Commissioner of the Indiana Department of State Revenue, a written document identifying the basis for each objection within fifteen (15) days after service of this proposed decision. IC 4-21.5-3-29(d).
- 2) Judicial review of a final order may be sought under IC 4-21.5-5.

**THIS PROPOSED DEPARTMENTAL ORDER SHALL BECOME THE FINAL ORDER
OF THE INDIANA DEPARTMENT OF STATE REVENUE UNLESS OBJECTIONS
ARE FILED WITHIN FIFTEEN (15) DAYS FROM THE DATE THE ORDER IS
SERVED ON THE PETITIONER.**

Dated: _____

Bruce R. Kolb / Administrative Law Judge